



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DAVID B. AND DELORES Y. GIBSON)

Appearances:

For Appellants: Alexander F. Eagle III
Attorney at Law

For Respondent: David M. Hinman
Counsel

OPINION

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of David B. and Delores Y. Gibson against proposed assessments of additional personal income tax in the amounts of \$482.54 and \$196.42 for the years 1967 and 1968, respectively.

The question presented is whether the assessments are barred by the statute of limitations.

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On May 31, 1972, respondent issued a notice of proposed assessment for each of the years in issue, based on a federal audit report that respondent had received from the Internal Revenue Service. Appellants protested the assessments and informed respondent that they were litigating their federal tax liability in the U. S. Tax Court. On December 9, 1972, appellants informed respondent that the IRS had further revised their liability for 1968, but respondent took no action pending the outcome of the Tax Court proceedings. Subsequently, appellants advised respondent by letter on October 5, 1973, that the revisions they had reported in December 1972 represented the final determination of their federal income tax liability for 1968. Respondent alleges, however, and appellants do not deny, that appellants' October 5 letter did not constitute the timely notification of the final federal determination for 1967 and 1968 that is required by Revenue and Taxation Code section 18451^{1/} and the applicable regulations. (Cal. Admin. Code, tit. 18, regs. 18451, 18581-18601(c).) Nevertheless, on the basis of the information submitted by appellants, respondent issued notices of action affirming the original 1967 assessment and making appropriate revisions in the 1968 assessment.

The basic statute of limitations for deficiency assessments is contained in Revenue and Taxation Code section 18586, which provides:

Except in the case of a fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise fixed.

^{1/} "If the amount of gross income or deductions for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, ... such taxpayer shall report such change or correction, .. within 90 days after the final determination of such change or correction. ..., or as required by the Franchise Tax Board, and shall concede the accuracy of such determination or state wherein it is erroneous. ..."

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One of the circumstances which extends the 'basic four-year' statute of limitations is the taxpayer's failure to report a federal change in his taxable income. In such cases Revenue and Taxation Code section 18586. 2 provides:

If a taxpayer shall fail to report a change, or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or shall fail to file an amended return as required by section 18451, a notice of proposed deficiency assessment resulting from such adjustment may be mailed to the taxpayer within four years after said change, correction, or amended return is reported to or filed with the Federal Government.

Since appellants undisputedly failed to report the final federal changes as required by section 18451, it follows under section 18586.2 that respondent had four years from the date of those changes in which to assess deficiencies against appellants. Inasmuch as the assessments here in question actually antedated the Tax Court decision, they obviously were issued well within the applicable limitations period.

Appellants contend, however, that section 18586 bars at least the 1967 assessment because respondent waived the additional time arising from the federal action by commencing its own audit before the normal four-year statute of limitations had expired. ^{2/} No authority has been cited for this proposition, and we fail to see how such a waiver could be implied in the face of clear legislative expression of an intent to extend the time for assessment whenever a taxpayer fails to report a change in his taxable income for federal income tax purposes. Moreover, since section 18586. 2 fixes 3 time limit specifically for state assessments resulting from federal adjustments, it clearly contemplates respondent's USC of

^{2/} It is unclear whether appellants' argument was meant to include the 1968 assessment. We will assume that it was not, however, since it is readily apparent that this assessment **would** not be barred even by the four-year period set forth in section 18586. For the purposes of that section, appellants' timely return for 1968 is deemed to have been filed on April 15, 1969. Since respondent mailed its notice of assessment for 1968 on May 31, 1972, the assessment was clearly made within four years after the return was filed.

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information gained through federal tax audits, (Cf. RKO Teleradio Pictures, Inc. v. Franchise Tax Board, 246 Cal. App. 2d 812, 820 [55 Cal. Rptr. 299].) It would therefore be inappropriate to hold respondent to the usual four-year period of section 18586, where, as here, it would have the effect of requiring respondent to issue an assessment before it had any notice of the final federal determination.

Appellants also argued on brief that the application of section 18586. 2 in this case would violate due process of law. We decline to consider that argument, however, in keeping with our well established policy not to decide constitutional issues in cases involving deficiency assessments. (See Appeal of Paul Peringer, Cal. St. Bd. of Equal. , Dec. 12, 1972; Appeal of Maryland Cup Corp. , Cal. St. Bd. of Equal. , March 23, 1970.)

For the reasons stated above, we hold that the assessments in question are not barred by the statute of limitations.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of David B. and Delores Y. Gibson against proposed assessments of additional personal income tax in the amounts of \$482.54 and \$196.42 for the years 1967 and 1968, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of April, 1975, by the State Board of Equalization.

William W. Bennett, Chairman
George K. Smith, Member
Philip K. Brown, Member
_____, Member
_____, Member

ATTEST: *W. W. Hendon* Executive Secretary